

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
CRIMINAL DIVISION  
VENUE: SAN FRANCISCO

FILED  
2010 JUN -1 P 3:35  
RICHARD W. DEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIF.

UNITED STATES OF AMERICA,  
v.

  
PETER TOWNSLEY

CR 10 0428

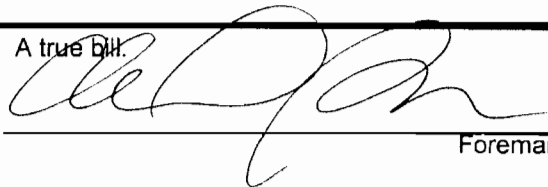
DEFENDANT.

CRB

## INDICTMENT

18 U.S.C. § 1349 – Mail Fraud Conspiracy  
18 U.S.C. § 1341 – Mail Fraud  
18 U.S.C. § 1001(a) – False Statement  
18 U.S.C. § 2 – Aiding & Abetting

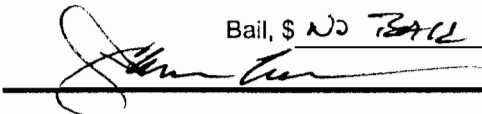
A true bill.

  
Foreman

Filed in open court this 1<sup>st</sup> day of  
JUNE 2010

Clerk

Bail, \$ NO BAIL ARREST WARRANT





## DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ INFORMATION ☒ INDICTMENTMatter Sealed: ☐ Juvenile ☒ Other than Juvenile
☐ Pre-Indictment Plea ☐ Superseding ☐ Defendant Added  
☒ Indictment ☐ Charges/Counts Added  
☐ Information

Name of District Court, and/or Judge/Magistrate Location (City)

 UNITED STATES DISTRICT COURT San Francisco  
 DISTRICT OF Northern California Divisional Office

 Name and Office of Person  
 Furnishing Information on  
 THIS FORM JOSEPH P. RUSSONIELLO  
☐ U.S. Atty ☐ Other U.S. Agency  
 Phone No.

 Name of Asst.  
 U.S. Attorney  
 (if assigned) Stacey P. Geis

## PROCEEDING

Name of Complainant Agency, or Person (&amp; Title, if any)

FBI and USDA

☐ person is awaiting trial in another Federal or State Court  
 (give name of court)

☐ this person/proceeding transferred from another district  
 per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges  
 previously dismissed which were  
 dismissed on motion of:

☐ U.S. Atty ☐ Defense

☐ this prosecution relates to a  
 pending case involving this same  
 defendant. (Notice of Related  
 Case must still be filed with the  
 Clerk.)

☐ prior proceedings or appearance(s)  
 before U.S. Magistrate Judge  
 regarding this defendant were  
 recorded under
SHOW  
DOCKET NO.MAG. JUDGE  
CASE NO.Place of  
offense County

CASE NO.

USA vs.

Defendant: PETER TOWNSLEY

Address:

CR 10 0428

☐ Interpreter Required Dialect:

Birth

Date

☒ Male☐ Alien☐ Female

(if applicable)

Social Security Number

## DEFENDANT

Issue: ☒ Warrant ☐ Summons

Location Status:

Arrest Date or Date Transferred to Federal Custody

☐ Currently in Federal Custody☐ Currently in State Custody☐ Writ Required☐ Currently on bond☐ Fugitive

Defense Counsel (if any):

☐ FPD☐ CJA☐ RET'D☐ Appointed on Target Letter☐ This report amends AO 257 previously submitted

## OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts 10

Set	Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4)	Description of Offense Charged	Count(s)
	18 U.S.C. § 1349 (4)	Conspiracy to Commit Mail Fraud	1
	18 U.S.C. § 1341 (4)	Mail Fraud	2-8
	18 U.S.C. § 1001(a) (4)	False Statements	9-10
	18 U.S.C. § 2	Aiding & Abetting	
	Please see attached for Maximum Penalties		

ATTACHMENT

Penalty:

Count One: 20 yrs Imprisonment; \$250,000 fine; 3yrs Supervised Release; \$ 100  
Special Assessment.

Counts Two-Eight: 20yrs Imprisonment; \$ 250,000 fine; 3yrs Supervised Release; \$100  
Special Assessment.

Counts Nine-Ten : 5yrs Imprisonment; \$ 250,000 fine; 3yrs Supervised Release; \$ 100  
Special Assessment.

JOSEPH P. RUSSONIELLO (CABN 44332)  
United States Attorney

FILED  
2010 JUN -1 P 3:36  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
SAN FRANCISCO DISTRICT COURT

[REDACTED]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CRB

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER TOWNSLEY,

Defendant.

CR 10 0428

VIOLATIONS:

18 U.S.C. § 1349 – Mail Fraud Conspiracy  
18 U.S.C. § 1341 – Mail Fraud  
18 U.S.C. § 1001(a) – False Statement  
18 U.S.C. § 2 – Aiding & Abetting

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND AND LEGAL FRAMEWORK

At all times relevant to this Indictment:

1. The defendant, PETER TOWNSLEY, was the founder and president of California Liquid Fertilizer (“CLF”), a company that sold products represented to be organic fertilizers to farmers throughout California.

2. CLF first maintained an office and manufacturing facility in

1 Salinas, California, and in 1999, moved to Gonzales, California, both of which are in the  
2 Northern District of California.

3 3. In 1990, Congress enacted the Organic Foods Production Act of 1990,  
4 7 U.S.C. § 6501-6522 (the “Act”), to regulate the organic agriculture industry. As part of  
5 the Act, the United States Department of Agriculture (“USDA”) created the National  
6 Organic Program (“NOP”) to ensure that agricultural products being sold as organic were  
7 made from entirely organic inputs and ingredients.

8 4. The NOP developed, implemented, and administered national production,  
9 handling, and labeling standards for organic agricultural products. The Act generally  
10 required that to be sold or labeled as an organically produced agricultural product, the  
11 product (1) must be produced and handled without the use of synthetic chemicals, and (2)  
12 must not be produced on land to which any prohibited substances, including synthetic  
13 chemicals, had been applied during the previous three years. 7 U.S.C. § 6504. The Act  
14 also provided that, with limited exceptions, organic crop producers could not use  
15 fertilizers containing synthetic inputs or ingredients. 7 U.S.C. § 6508(b).

16 5. It could take a minimum of three years for a farm to become certified to sell  
17 organic products because the farm’s land must be free from synthetic chemicals,  
18 including synthetic chemical fertilizers, for at least three years.

19 6. An organic farm was required to be certified as complying with NOP  
20 regulations in order to market its production as “organic.” The NOP granted organic  
21 certification through quasi-governmental groups called “certifiers.” Certifiers, such as  
22 California Certified Organic Farmers (“CCOF”), were accredited by the USDA through a  
23 strict application process.

24 7. On February 6, 2004, the NOP approved California’s State Organic  
25 Program, allowing the state to enforce NOP requirements. After this date, the California  
26 Department of Food & Agriculture (“CDFA”) was responsible for licensing and  
27 registering distributors and manufacturers of fertilizer materials, including both organic  
28

1 and non-organic fertilizer. The CDFA required all fertilizer material to be appropriately  
2 and accurately labeled.

3       8. The CDFA also required that, in order for an entity to be licensed as an  
4 organic fertilizer manufacturer in California, its products had to be approved by the  
5 Organic Materials Review Institute ("OMRI"). OMRI was a non-profit organization that  
6 provided independent review of materials and processes to determine their suitability for  
7 producing, processing, and handling organic food and fiber. Thus, a certifier such as  
8 CCOF could check to see if a product, such as a fertilizer, used by a farmer was listed as  
9 approved by OMRI in order to determine whether to allow a farm to become certified, or  
10 remain certified, as an organic farm. Organic farmers also relied on OMRI certification,  
11 found on a product's label, to ensure that the products they were using for organic  
12 production complied with NOP standards.

13       9. To have a product such as a fertilizer placed on OMRI's list of approved  
14 products, a manufacturer such as CLF was required to submit an application to OMRI  
15 disclosing all the ingredients in the product and the manner in which it was manufactured  
16 or produced. Once a product was approved by OMRI to be listed as organic, the  
17 manufacturer of the product was required to renew its application every year in order to  
18 maintain the OMRI listing. In doing so, the manufacturer was required to disclose and  
19 certify, among other things, whether anything had changed in the formulation of the  
20 product. OMRI also required that should an input or ingredient in the product's  
21 formulation change at any time, the manufacturer must submit a new application for the  
22 reformulated product immediately to ensure NOP compliance.

23       10. Under Title 7, C.F.R. § 205.105(a), synthetic substances can not be used in  
24 organic production unless they are specifically listed as allowed on a National List  
25 developed by the National Organics Standards Board for the NOP. OMRI would not  
26 approve a product if an input was not on the National List. Ammonium chloride and  
27  
28



1 ammonium sulfate are both synthetic chemicals and at all relevant times were not on the  
2 National List.

3 SCHEME TO DEFRAUD

4 11. Beginning at a time unknown to the grand jury, but no later than April  
5 2000, and continuing through in or about December 2006, in the Northern District of  
6 California and elsewhere, the defendant,

7 PETER TOWNSLEY,

8 and others known and unknown to the grand jury, did engage in a material scheme to  
9 defraud OMRI, certifiers such as CCOF, and customers such as farmers, including  
10 organic farmers, and to obtain money and property from customers by means of  
11 materially false and fraudulent pretenses, representations and promises, and by material  
12 omissions, and did use the mails and cause the mails to be used to carry out and attempt to  
13 carry out essential parts of the scheme.  
14

15 12. In November and December 1998, TOWNSLEY signed and submitted  
16 applications to OMRI to have a CLF product called "Biolizer XN" listed as organic.  
17 TOWNSLEY's final application on behalf of CLF stated that Biolizer XN was a liquid  
18 organic fertilizer composed of ocean-going fish and fish byproducts, feathermeal, and  
19 water. In reliance on these representations, in February 1999, OMRI approved Biolizer  
20 XN to be listed as an organic fertilizer. CLF then began marketing Biolizer XN as an  
21 organic fertilizer that was OMRI listed.

22 13. As part of his scheme to defraud, in approximately May 2000,  
23 TOWNSLEY knowingly changed and caused to be changed the chemical ingredients in  
24 Biolizer XN. TOWNSLEY and others affiliated with CLF changed the formulation of  
25 Biolizer XN because the fish and feathermeal were not well suited for drip irrigation (the  
26 manner in which organic farmers apply organic fertilizer), and because the fish and  
27 feathermeal ingredients did not provide the amount of nitrogen that customers were  
28 seeking. Despite knowing that the new formulations did not contain fish and feathermeal,

1 had not been approved by OMRI, and contained synthetic ingredients, TOWNSLEY  
2 continued to sell Biolizer XN as an organic product until December 2006.

3 14. As a further part of his scheme to defraud, from approximately August 2000  
4 through July 2006, TOWNSLEY submitted annual renewal applications to OMRI that  
5 falsely stated that the information previously submitted to OMRI regarding the  
6 composition of Biolizer XN had not changed. At no time after obtaining the initial  
7 approval from OMRI in 1999 did TOWNSLEY inform OMRI of the change in  
8 ingredients or submit a new application to OMRI for the reformulated product.

9 15. From August 2000 through December 2006, based on TOWNSLEY's  
10 material misrepresentations and omissions, OMRI kept Biolizer XN on the list of  
11 accepted organic fertilizers and permitted CLF to use the "OMRI Listed" trademark on  
12 the Biolizer XN labels.

13 16. As a further part of his scheme to defraud, TOWNSLEY marketed and sold  
14 CLF's Biolizer XN fertilizer as a product that was approved and listed by OMRI. The  
15 labels of Biolizer XN stated that the product was derived from "ocean going fish and  
16 hydrolized feathermeal" or from "seafood byproducts, plant extracts, and hydrolyzed  
17 feathermeal." The labels further stated that "this product is marketed as 100% natural,  
18 organic fertilizer, whose ingredients are derived from organic inputs." The labels also  
19 bore the "OMRI Listed" trademark. At no time did the labels disclose the synthetic  
20 ingredients. From May 2000 through in or about December 2006, TOWNSLEY  
21 marketed and sold approximately \$6 million worth of Biolizer XN with this information  
22 on the label knowing that OMRI had not approved the formulation being marketed, and  
23 knowing that the product did not contain fish or feathermeal.

24 COUNT ONE: 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud

25 17. Paragraphs 1 through 16 of this Indictment are hereby re-alleged and  
26 incorporated by reference as if set forth in full herein.

27 18. From at least in or about April 2000 through in or about December 2006,  
28



1 both dates being approximate and inclusive, in the Northern District of California and  
2 elsewhere, the defendant,

3 PETER TOWNSLEY,

4 together with others, did knowingly and intentionally conspire to devise a material  
5 scheme and artifice to defraud, and to obtain money and property by means of materially  
6 false and fraudulent pretenses, representations and promises, and by material omissions,  
7 and for the purpose of executing such scheme and artifice, did use the mails and  
8 knowingly cause the mails to be used, in violation of Title 18, United States Code,  
9 Section 1349.

10 Certain Acts in Furtherance of the Conspiracy

11 19. As part of the conspiracy and to carry out its objects, the defendant PETER  
12 TOWNSLEY, together with others known and unknown to the grand jury, committed and  
13 caused to be committed the following acts, among others, in the Northern District of  
14 California and elsewhere:

15 a. In or about April 2000, TOWNSLEY and others who worked for CLF  
16 changed the ingredients for the manufacture of Biolizer XN from fish and feathermeal to  
17 a product that contained a synthetic chemical called ammonium chloride. Ammonium  
18 chloride is a synthetic chemical that is prohibited for use in organic farming practices.

19 b. On or about August 18, 2000, TOWNSLEY submitted by mail an annual  
20 renewal form for Biolizer XN to OMRI, which he signed and dated July 30, 2000, and  
21 which stated the following certification: "The Information above and attached is correct  
22 to the best of my knowledge, and the information already submitted to OMRI regarding  
23 the products listed above has not changed. I agree to abide by all policies in the most  
24 current version of the OMRI Operating Manual." Between submitting the initial  
25 applications to OMRI for the approval of Biolizer XN in November and December 1999,  
26 and submitting the renewal application to OMRI on or about August 18, 2000, Townsley  
27 had submitted renewal applications for Biolizer XN in which he also certified that the  
28

1 information previously submitted to OMRI regarding Biolizer XN had not changed.

2 c. In or about May 2001, TOWNSLEY and others who worked for CLF  
3 again changed the ingredients for the manufacture of Biolizer XN, thereby substituting  
4 one prohibited synthetic ingredient for another prohibited synthetic ingredient. The new  
5 ingredient was ammonium sulfate – a synthetic chemical that is a by-product from the  
6 production of lysine and is commonly used as a fertilizer in conventional, non-organic  
7 farming.

8 d. From approximately May 2001 through December 2006, CLF produced  
9 Biolizer XN without using fish or feathermeal as ingredients, but instead using only  
10 ammonium sulfate as the sole ingredient for its manufacture.

11 e. From approximately May 2001 through December 2006, TOWNSLEY  
12 marketed and sold Biolizer XN bearing labels that stated that the product was 100%  
13 organic, and that the sole ingredients were fish and feathermeal.

14 f. On or about August 7, 2001, TOWNSLEY submitted by mail an annual  
15 renewal form for Biolizer XN to OMRI, which he signed and dated July 24, 2001.  
16 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
17 had not changed.

18 g. On or about September 6, 2002, TOWNSLEY submitted by mail an  
19 annual renewal form for Biolizer XN to OMRI, which he signed and dated August 30,  
20 2002. TOWNSLEY falsely certified that the information previously submitted for  
21 Biolizer XN had not changed.

22 h. On or about September 8, 2003, TOWNSLEY submitted by mail an  
23 annual renewal form for Biolizer XN to OMRI, which he signed and dated August 30,  
24 2003. TOWNSLEY falsely certified that the information previously submitted for  
25 Biolizer XN had not changed.

26 i. On or about November 3, 2003, CLF sent approximately 3,000 gallons of  
27 Biolizer XN to an organic grower.  
28

1 j. On or about March 5, 2004, TOWNSLEY submitted by mail an annual  
2 renewal form for Biolizer XN to OMRI, which he signed and dated February 11, 2004.  
3 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
4 had not  
5 changed.

6 k. On or about August 9, 2004, TOWNSLEY submitted by mail an annual  
7 renewal form for Biolizer XN to OMRI, which he signed and dated August 2, 2004.  
8 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
9 had not changed.

10 l. On or about July 22, 2005, TOWNSLEY submitted by mail an annual  
11 renewal form for Biolizer XN to OMRI, which he signed and dated July 18, 2005.  
12 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
13 had not changed.

14 m. On or about July 1, 2005, CLF purchased approximately 190,000  
15 pounds of ammonium sulfate from a company located in Illinois.

16 n. On or about July 21, 2006, TOWNSLEY submitted by mail an annual  
17 renewal form for Biolizer XN to OMRI, which he signed and dated June 29, 2006.  
18 TOWNSLEY falsely certified that the information previously submitted for Biolizer XN  
19 had not changed.

20 o. On or about July 22, 2006, CLF purchased approximately 190,000  
21 pounds of ammonium sulfate from a company located in Illinois.

22 p. On or about October 24, 2006, CLF sent an invoice to a supplier who  
23 provides organic fertilizer to organic farmers for the purchase of a bulk shipment of  
24 Biolizer XN.

25 COUNTS TWO THROUGH EIGHT: 18 U.S.C. § 1341 – Mail Fraud

26 20. The allegations set forth in paragraphs 1 through 16 of this Indictment are  
27 hereby re-alleged and incorporated herein by reference as if set forth in full herein.  
28

21. On or about the dates set forth below, in the Northern District of California and elsewhere, to execute the scheme and artifice defraud set forth above, the defendant,

PETER TOWNSLEY,

did knowingly cause to be deposited in post offices and authorized depositories the below-listed mail matter to be delivered by the United States Postal Service and private and commercial interstate carriers:

Count	Approximate Date of Mailing	Mailed From	Mailed To	Item Description
2	July 22, 2005	Gonzales, CA	Eugene, OR	OMRI Annual Renewal Form
3	August 10, 2006	Gonzales, CA	Eugene, OR	Letter from Townsley to OMRI with current Biolizer XN label
4	July 21, 2006	Gonzales, CA	Eugene, OR	OMRI Annual Renewal Form
5	August 18, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to customer for Biolizer XN
6	August 23, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to customer for Biolizer XN
7	September 7, 2006	Gonzales, CA	Salinas, CA	Invoice from CLF to customer for Biolizer XN
8	October 24, 2006	Gonzales, CA	Fresno, CA	Invoice from CLF to customer for Biolizer XN

All in violation of Title 18, United States Code, Section 1341.

COUNTS NINE AND TEN: 18 U.S.C. § 1001 – False Statements

22. Paragraphs 1 through 16 of this Indictment are hereby re-alleged and incorporated by reference as if set forth in full herein.

23. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

PETER TOWNSLEY,

did knowingly and willfully (1) falsify, conceal and cover up by trick, scheme, and device a material fact, (2) make a materially false, fictitious, and fraudulent statement and representation, and (3) make and use a materially false writing and document, knowing the same to contain materially false, fictitious and fraudulent statements and entries, in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, submitting to OMRI an annual renewal form stating that the information about the formulation of Biolizer XN had not changed from the time that the information was originally submitted in 1998, when, in fact, TOWNSLEY knew that was not true:

Count	Date	Item Description
7	July 22, 2005	OMRI Annual Renewal Form
8	July 21, 2006	OMRI Annual Renewal Form

All in violation of Title 18, United States Code, Section 1001(a).

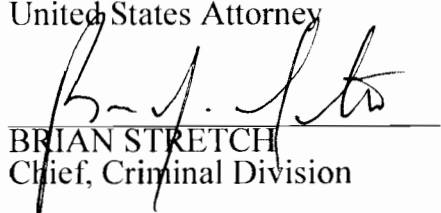
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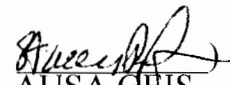
June 1<sup>st</sup> 2010

A TRUE BILL.

  
FOREPERSON

JOSEPH P. RUSSONIELLO  
United States Attorney

  
BRIAN STRETCH  
Chief, Criminal Division

(Approved as to form:   
AUSA GZIS